

R E M A R K S

Claims 1-88 remain pending in the application. Claims 13-15, 41-43, and 69-71 are currently being cancelled without prejudice, claims 1, 16, 30, 44, 58 and 72 are currently being amended, and no claims are currently being added. Reconsideration of all pending claims in light of the remarks presented below is respectfully requested.

Summary of Applicant Initiated Examiner Interview

Applicants thank the Examiner for the telephone interview of October 3, 2007. As set forth in the Argument 1 section below, Applicants have amended independent claims 16, 44 and 72 as suggested by the Examiner.

A brief summary of the telephone interview pursuant to 37 CFR § 1.133 is provided.

Present at the telephone interview were Examiner Phuoc Nguyen, Richard Wawrzyniak, and James O'Hare. The prior art discussed was U.S. Publication No. 2003/0045275 to McDonagh and U.S. Patent No. 6,594,699 to Sahai.

In the telephone interview, the Response to Arguments section of the Office Action was discussed, (Office Action Page 2 Line 13 - Page 4 Line 8). Applicants pointed out that the Response to Arguments addressed only one of three principal arguments provided in Applicants' Office Action Response, filed on April 23, 2007. Applicants and the Examiner briefly discussed each of the three principal arguments.

The general thrust of the first principal argument discussed was that McDonagh failed to disclose "determining whether an upgrade could make any additional of the additional of the

plurality of predefined service levels available to the user device". The general thrust of the second principal argument discussed was that McDonagh failed to disclose "wherein selection a service level is performed at a network service manager device independent of a network provider from which the content is transferred". The general thrust of the third principal argument discussed was that the combination of Sahai in view of McDonagh is not an obvious combination.

In response to the first argument, the Examiner maintained that McDonagh anticipates the "service levels" recited in claims 1 and 16. The Examiner identified the "service offers" in paragraphs 101 and 103 of McDonagh and asserted that McDonagh's service offers are the same or equivalent to Applicants' recited service levels. Applicants disagreed.

In response to the second argument, the Examiner reiterated his belief that McDonagh's service levels were equivalent to Applicant's service levels. The Examiner also maintained that McDonagh's Bluetooth network anticipates "a network service manager device independent of a network provider".

In response to the third argument, the Examiner pointed to text in McDonagh that the Examiner asserted supported his position.

No agreement about the patentability of the claims as written was reached.

At the close of the interview, the Examiner indicated that Applicants could overcome the rejection by further defining the recited "predefined service levels" in the claim language. The Examiner suggested reciting in the claims specific "service levels" that the Examiner said were disclosed in the specification.

Applicants thank the Examiner for his suggested amendment to the claims. The Examiner's suggestion is incorporated in the claim amendments herein.

Claim Rejections under 35 U.S.C. § 103

Claims 1-88 were rejected under 35 U.S.C. § 103 as being unpatentable over Sahai in view of McDonagh. Applicants respectfully traverse this rejection.

AMENDMENT AND ARGUMENT I

As suggested by the Examiner during the telephone interview, Applicants have amended claims 16-29, 44-57, and 72-88 to recite the specific service levels from Table 1 in Applicants' specification. After entry of the amendment, these claims now recite all of the following limitations that further distinguish the claims over Sahai in view of McDonagh:

[1] wherein the identified service levels comprise a plurality of predefined service levels that include,

a first predefined service level that makes text files available,

a second predefined service level that makes text files and video game software applications available,

a third predefined service level that makes text files, video game software applications, video streaming, and CD quality sound files available, and

a fourth predefined service level that makes text files, video game software applications, video streaming, CD quality sound files, and higher resolution video streaming

available.

Support for this amendment may be found in Applicants' specification in Table 1 on page 21. Thus, Applicants have complied with the Examiner's suggestion to specifically define predefined service levels.

The Office Action asserts that the recited service levels are disclosed in McDonagh. (Office Action, Page 5, Lines 8-13, Page 9, Lines 2-7). Applicants respectfully traverse.

McDonagh's disclosure is directed toward mobile commerce and pushing service offers to users of mobile devices such as mobile telephones. (McDonagh, Paragraphs 1, 2). The mobile devices act as a bridge providing data to other Bluetooth enabled devices. (McDonagh, Paragraph 49). The service offers pushed are data content offers such as constantly updated currency rates, MP3 song downloads or sports score updates. (McDonagh, Paragraphs 62, 64, 112).

In contrast, Applicant's service levels are capacity levels associated with the recited communication link. The service levels include a first predefined service level that makes text files available, a second predefined service level that makes text files and video game software applications available, a third predefined service level that makes text files, video game software applications, video streaming, and CD quality sound files available, and a fourth predefined service level that makes text files, video game software applications, video streaming, CD quality sound files, and higher resolution video streaming available.

McDonagh's service offers are thus data content related while Applicant's service levels are communication link related. Data

content and communication link capability are not the same. In fact, McDonagh's service offers of content is a far cry from the service levels of recital [1] shown above. Thus McDonagh, like Sahai, fails to disclose either of the two recited limitations making claims 1-88 patentable over Sahai in view of McDonagh. Accordingly, Applicant respectfully requests that the rejections be withdrawn.

AMENDMENT AND ARGUMENT II

Applicants have also amended claims 1-12, 30-40 and 58-68 to add further limitations that more precisely define the invention recited in these claims. After entry of this amendment, these claims will recite the following limitations that further distinguishes the claims over Sahai in view of McDonagh:

[2] transmitting a message to the user device that causes a notice having an advertisement link to be displayed on the user device, wherein the advertisement link is for a provider that could assist in making changes to a configuration of the user device in order to upgrade the capabilities of the user device; and

monitoring selections of the advertisement link;

wherein the advertisement link may effect a receipt of compensation.

Support for these added limitations may be found in Applicants' specification at, for example, Figure 6, Page 23, Line 22 - Page 24, Line 15, and Original Claims 13-15, 41-43, 69-71.

The Office Action alleges that McDonagh teaches in paragraph 105, notifying the user device of any available upgrade and

notifying the user device of changes that may be made to the configuration of the user device in order to upgrade the capabilities of the user device. (Office Action, Page 5 , Lines 15-17). The Office Action also alleges that McDonagh teaches in paragraph 105, sending one or more advertisements to the user device regarding changes that may be made to the configuration of the user device. (Office Action, Page 6, Lines 1-5). Applicants respectfully traverse.

While paragraph 105 mentions a service can be displayed on the screen of a mobile terminal, the paragraph largely relates to handling errors and failures if a Bluetooth user leaves a piconet.

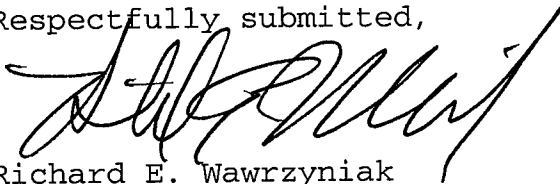
This paragraph is a far cry from the limitations of recitation [2] shown above. For example, McDonagh fails to discuss an advertisement link for a provider, monitoring selections of the advertisement link, and wherein the advertisement link may effect a receipt of compensation. Since claims 1-12, 30-40 and 58-68 all recite the limitations of [1] shown above and the limitations are not disclosed by either Sahai or McDonagh, the claims are patentable over Sahai in view of McDonagh. As such, the rejections should be withdrawn.

Amendment  
App. No. 09/903,308

C O N C L U S I O N

By way of this response, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,



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